

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ROCK HILL DIVISION

Ernest Yarborough,)	C/A NO. 0:06-2329-CMC-BM
)	
Petitioner,)	
)	OPINION and ORDER
v.)	
)	
Henry McMaster, Attorney General of)	
the State of South Carolina,)	
)	
Respondent.)	
_____)	

This matter is before the court on the *pro se* petition for writ of habeas corpus filed in this court pursuant to 28 U.S.C. § 2254. Respondent has moved to dismiss the petition with prejudice.

In accordance with 28 U.S.C. § 636(b) and Local Civil Rule 73.02 (B)(2)(c), DSC, this matter was referred to United States Magistrate Judge Bristow Marchant for pre-trial proceedings and a Report and Recommendation. On March 6, 2007, the Magistrate Judge issued a Report recommending that the petition be dismissed without prejudice. The Magistrate Judge advised Petitioner of the procedures and requirements for filing objections to the Report and Recommendation and the serious consequences if he failed to do so. Petitioner has filed no objections to the Report and the time for doing so has expired. Respondent has filed an objection to the Report.

The Magistrate Judge makes only a recommendation to this court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the court. *See Mathews v. Weber*, 423 U.S. 261 (1976). The court is charged with making a *de novo* determination of any portion of the Report and Recommendation of the Magistrate Judge to which a specific objection is made. The court may accept, reject, or modify, in whole or in part, the

recommendation made by the Magistrate Judge or recommit the matter to the Magistrate Judge with instructions. *See* 28 U.S.C. § 636(b). The court reviews the Report and Recommendation only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Accident Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that “in the absence of a timely filed objection, a district court need not conduct a *de novo* review, but instead must only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation.”) (citation omitted).

After reviewing the record of this matter, the applicable law, the Report and Recommendation of the Magistrate Judge, and the objections of Respondent, the court agrees with the conclusion of the Magistrate Judge that this petition should be dismissed without prejudice.

Respondent seeks dismissal of this petition with prejudice pursuant to Federal Rule of Civil Procedure 41(b). The court declines to dismiss the petition with prejudice. There is no evidence of Petitioner’s receipt of the Magistrate Judge’s order notifying him of his duty to keep this court apprised of any change of address, nor of Petitioner receiving the Magistrate Judge’s Report and Recommendation which recommended that this petition be dismissed. While it is within the inherent authority of this court to dismiss this petition, the court believes dismissal without prejudice is appropriate.

Respondent’s motion to dismiss is **granted in part**. The petition is hereby dismissed without prejudice for failure to prosecute.

IT IS SO ORDERED.

s/ Cameron McGowan Currie
CAMERON MCGOWAN CURRIE
UNITED STATES DISTRICT JUDGE

Columbia, South Carolina
April 10, 2007

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